

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against-

LEV PARNAS,
IGOR FRUMAN, and
ANDREY KUKUSHKIN,

Defendants

S1 19 Cr. 725 (JPO)

**DECLARATION OF GERALD B. LEFCOURT, ESQ.,
PURSUANT TO 28 U.S.C. §1746 AND S.D.N.Y. LOCAL RULE 2 (B)**

I, Gerald B. Lefcourt, hereby declare pursuant to the provisions of 28 U.S.C. §1746 and S.D.N.Y. Local Rule 2 (B), and under penalty of perjury, that the following is true and correct:

1. I am an attorney at law, admitted to practice before the courts of the state of New York and *inter alia*, the United States District Court for the Southern District of New York.

2. Gerald B. Lefcourt, P.C., of which I am a principal, is counsel of record to Andrey Kukushkin, a defendant in this matter. I make this declaration to present certain facts which are used in support of Mr. Kukushkin's Pretrial Motions and are discussed in the accompanying Memorandum of Law.

FACTS RELEVANT TO THE MOTION TO DISMISS AND TO SUPPRESS

3. In or about 2018, Lev Parnas, Igor Fruman, David Correia, Andrey Kukushkin and others were forming a cannabis business (the "Cannabis Venture"). As is typically the case when forming a venture such as this, Messrs. Parnas, Fruman, Correia, Kukushkin and the others

consulted with multiple attorneys and advisors to ensure their compliance with various laws and regulations. Some of those consultations and communications were conducted in person, while others were conducted by phone, and still others by email.

4. [REDACTED] through his role at a business advisory company called [REDACTED]

5. As an advisor, [REDACTED] had a close working relationship with the defendants, particularly Mr. Kukushkin who was assisting in the planning of the Cannabis Venture.

6. According to the government, [REDACTED]

[REDACTED] *See*
Ex. A, p. 6

7. Another advisor, this one a legal advisor, was [REDACTED] is admitted to the bar of both the State of California and the State of New York, information that is readily obtainable from online public data. [REDACTED]

8. In the course of forming the Cannabis Venture, Mr. Kukushkin, Mr. Correia, attorneys at [REDACTED]

9. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10. The [REDACTED] Email, as with all others in The Chain, was an attorney-client privileged communication. [REDACTED]

[REDACTED]

[REDACTED]

11. An attorney with whom Mr. Kukushkin and others enjoyed an attorney-client relationship was an addressee on each email in The Chain, including the [REDACTED] Email.

12. One of those attorneys is [REDACTED], who was an addressee on the [REDACTED] [REDACTED] Email.

13. At the time of Mr. Kukushkin's arrest, [REDACTED]

[REDACTED] During that process, documents were submitted to the government which clearly identified [REDACTED] as an attorney and clearly established a valid attorney-client relationship between [REDACTED], Mr. Kukushkin, and various corporate entities [REDACTED]

[REDACTED]

14. In November 2019, after receiving the index for the government's first discovery production, I learned for the first time that on or about October 22, 2019, subsequent to his arrest, the government sought and obtained a search warrant for Mr. Kukushkin's email and Apple accounts. I, and other attorneys associated with my office, Mr. Kukushkin's [REDACTED] [REDACTED] as well as [REDACTED] and other attorneys had been emailing Mr. Kukushkin using this account during the time period covered by the search warrant. Accordingly, my office

informed the government that Mr. Kukushkin's accounts may contain attorney-client privileged communications and asked whether a filter team had been set up to assure no attorney-client privileged communications were reviewed or turned over to the government's trial team or to the defense.

15. In addition, my office provided a preliminary list of email addresses for attorneys with whom Mr. Kukushkin enjoyed an attorney-client relationship and whose correspondence likely appeared in the email and Apple accounts in question. Two email addresses on that list were for [REDACTED]. The [REDACTED] Email was addressed to one of those two email addresses.

16. In early December 2019, a second list of attorneys with whom Mr. Kukushkin maintained an attorney-client relationship was provided to the government. Included on that list was at least one attorney from the law firm [REDACTED]. Attorneys from [REDACTED] sent and/or received emails contained within The Chain.

17. In January 2020, the government contacted my office to advise that the filter team had seen communications between Mr. Kukushkin and two attorneys at [REDACTED] [REDACTED] that had not been on our first two lists. These attorneys [REDACTED] [REDACTED]. The government inquired as to whether Mr. Kukushkin maintained an attorney-client relationship with these attorneys. The government was told that Mr. Kukushkin did in fact have an attorney-client relationship with both attorneys and that he was asserting privilege with respect to communications with them. Notably, [REDACTED] sent and/or received various emails within The Chain.

18. In addition, the government was provided with names of other attorneys at [REDACTED] with whom Mr. Kukushkin enjoyed an attorney-client relationship and

asserted his attorney-client privilege with respect to those communications. Included on that list was [REDACTED] another attorney who sent and/or received emails in The Chains.

19. Also in January 2020, the government advised counsel for Messrs. Fruman, Correia and Kukushkin that materials Mr. Parnas was seeking to turnover to Congress as part of the impeachment proceedings were covered by a jointly held attorney-client privilege related to their lawful cannabis business. In response, Messrs. Fruman, Correia and Kukushkin lodged objections to Mr. Parnas' application on that basis. Dkt. 80, 81, 85.

20. In February 2020, my office further raised privilege issues with the government. More specifically, (a) the defendants' emails accounts contained communications protected by the attorney-client privilege, including in some cases, a jointly held privilege relating to their Cannabis Venture; and (b) the [REDACTED] Email, which had been quoted in the indictment and various search warrants, may be privileged. In addition, we requested information as to whether the [REDACTED] Email had been reviewed by a filter team prior to being presented to the grand jury. In response, the government asked the basis for the defendants' assertion of the privilege along with a litany of questions concerning the defendants' relationships with various attorneys and advisors on The Chain.

21. My office further inquired about the government's filter team procedures, the extent of the government's invasion of the privilege, the basis for the government's violation of Mr. Kukushkin's attorney-client privilege, and expressed bewilderment at the government's suggestion that there was any basis to conclude that The Chain or any email within it, including the [REDACTED] Email, was not privileged.

22. The government posited that the privilege had been broken [REDACTED]
[REDACTED] along with several other possible grounds for contending the
[REDACTED] Email wasn't privileged.

23. In or about March (as well as in July and August) 2020, [REDACTED]
[REDACTED] asserted the attorney-client privilege with
respect to every email contained within The Chain, including the [REDACTED] Email. *See* Ex.
A. [REDACTED]
[REDACTED]

24. At the end of April 2020, the government contacted counsel for all defendants and
informed us that from August to December 2018, certain attorneys [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Further, the defense was informed that the government was considering
seeking a ruling that these communications were not privileged and/or subject to the crime-fraud
exception. In response, Messrs. Kukushkin, Fruman, and Correia maintained that the emails
were privileged, and no exception applied. To my knowledge, the government never made an
application to the Court for a privilege ruling.

25. In or about May 2020, the government sought and obtained a search warrant for
[REDACTED] The [REDACTED] Email was quoted in the probable cause
affidavit. *See* Ex. G.

26. [REDACTED]
[REDACTED]
[REDACTED]

27. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

28. In September 2020, the Superseding Indictment was returned without any mention of the [REDACTED] Email.

29. In October 2020, in response to an inquiry by the defendants, the government again asserted that the [REDACTED] Email, [REDACTED] was not privileged, although the government did not know if it intends to use it at trial. The government did not identify any grounds for its contention.

30. In November 2020, in response to direct questions posed by the defense, the government refused to identify on what basis it claimed that the [REDACTED] Email was not privileged, insisting only that it is the defendants' burden to establish privilege.

FACTS RELEVANT TO THE MOTION FOR A FOREIGN DEPOSITION

31. I have maintained a relationship with counsel for Foreign National-1 since shortly after the initial indictment was unsealed.

32. During that time, I have had several conversations with him, all pursuant to a joint defense agreement and a common interest privilege. Without disclosing any facts inconsistent with that agreement or the privilege, based on those discussions, it is my understanding that Foreign National-1 will not come to the United States voluntarily to testify at Mr. Kukushkin's trial.

RULE 16.1 COMPLIANCE FACTS

33. Consistent with FED. R. CRIM. P. RULE 16.1, defense counsel made written demands for, and met and conferred with the government concerning the production of additional *Brady* material, as well as Exhibits, 3500 material, and *Giglio* material and the timing thereof.

34. An agreement between the parties could not be reached.

IDENTIFICATION OF EXHIBITS ANNEXED HERETO

35. Annexed hereto are true copies of the following documents, with the letter prefix corresponding to the Exhibit letter designation:

- A. Government's *Brady* Disclosure dated September 24, 2020.
- B. Government's *Brady* Disclosure dated October 28, 2020.
- C. Government's *Brady* Disclosure dated November 24, 2020.
- D. Chart of Search Warrant Applications citing, referencing, incorporating by reference, or relying upon in any manner attorney-client privileged communications of the defendants.
- E. Search Warrant to [REDACTED] and Apple, Inc. dated October 22, 2019.
- F. Search Warrant for Mr. Kukushkin's iPhone dated November 13, 2019.
- G. Search Warrant to [REDACTED] dated May 4, 2020.
- H. Mr. Kukushkin's demand for a Bill of Particulars dated November 19, 2020
- I. Government's response to Mr. Kukushkin's demand for a Bill of Particulars dated November 24, 2020

December 1, 2020

/s/ Gerald B. Lefcourt
Gerald B. Lefcourt

Exhibit A

Government's *Brady* Disclosure dated September 24,
2020

Exhibit B

Government's *Brady* Disclosure dated October 28, 2020

Exhibit C

Government's *Brady* Disclosure dated November 24,
2020

Exhibit D

Chart of Search Warrant Applications citing, referencing,
incorporating by reference or relying upon in any manner
attorney-client privileged communications of the
defendants

Date of Warrant	Description of Warrant	Relation to Privileged Material
October 9, 2019	Warrant for search and seizure of premises located at [REDACTED]	The privileged email is cited in the probable cause affidavit at page 26
October 9, 2019	Search and Seizure Warrant for: (1) premises located at [REDACTED] any closed containers/electronic devices contained therein, and (2) the Electronic Device known and described as an Apple iPhone with number [REDACTED]	The privileged email is cited in the probable cause affidavit at page 23
October 21, 2019	Warrant for nine electronic devices seized from defendants during the October 9, 2019 arrests, including: 3 iPhones seized from Lev Parnas, 1 iPad seized from Lev Parnas, 1 Nougat cellphone seized from Lev Parnas, 1 Samsung Galaxy seized from Lev Parnas, 2 iPhones seized from Igor Fruman, and 1 AT&T sim card seized from Igor Fruman	The privileged email is cited in the probable cause affidavit at page 28
October 21, 2019	Warrant for DHL Package bearing tracking number [REDACTED] sent by David Correia to his attorney, including any closed containers/items	The privileged email is cited in the probable cause affidavit at page 28
October 21, 2019	Warrant for three Apple iCloud accounts: (1) the Apple iCloud account assigned identification number [REDACTED] registered to Lev Parnas, using the email address [REDACTED] (2) the Apple iCloud account assigned identification number [REDACTED] registered to Lev Parnas, using the email address [REDACTED] and (3) the Apple iCloud account assigned identification number [REDACTED] registered to Igor Fruman, using telephone number [REDACTED] and email address [REDACTED]	The privileged email is cited in the probable cause affidavit at page 33
October 22, 2019	Warrant for three Apple iCloud Accounts and one [REDACTED] account: (1) the Apple iCloud account assigned identification number [REDACTED] using the email address [REDACTED] (2) the Apple iCloud account assigned identification number [REDACTED] registered to Andrey Kukushkin, using telephone number [REDACTED] and email [REDACTED] (3) the Apple iCloud account assigned identification number [REDACTED] registered to [REDACTED] using telephone number [REDACTED] and email address [REDACTED] and (4) the email account [REDACTED] maintained by [REDACTED]	The privileged email is cited in the probable cause affidavit at page 31
November 13, 2019	Warrant for the Apple iPhone X with model number [REDACTED] and [REDACTED] seized from Andrey Kukushkin during his October 9, 2019 arrest	The privileged email is cited in the probable cause affidavit at page 7
December 10, 2019	Warrant for sixteen devices and two boxes of documents and materials seized pursuant to two previous premises searches of the "Fruman Residence" [REDACTED] and the "Parnas Residence" [REDACTED] authorized by the two respective October 9, 2019 warrants	The privileged email is cited in Exhibit A at p. 26
February 27, 2020	Warrant for two iCloud accounts (with [REDACTED]), two iPhones, and one iPad, all belonging to Lev Parnas, and one iCloud account with identification number [REDACTED] all of which is located on five hard drive partitions containing the results of previous search warrants	The privileged email is cited by the October 9, October 21, and December 10, 2019 warrants that are cited at pp. 4-6
March 20, 2020	Warrant extension for October 21, 2019 warrant for the [REDACTED] assigned identification number [REDACTED] registered to Igor Fruman, using telephone number [REDACTED] email address [REDACTED]	The privileged email is cited in Exhibit 3 at p. 33
May 4, 2020	Warrant for all content associated with the email account [REDACTED] maintained at premises controlled by [REDACTED]	The privileged email is cited in the probable cause affidavit at page 11

Exhibit E

Search Warrant to [REDACTED] and Apple, Inc. dated October
22, 2019

Exhibit F

Search Warrant for Mr. Kukushkin's iPhone dated
November 13, 2019

Exhibit G

Search Warrant to  dated May 4, 2020

Exhibit H

Mr. Kukushkin's demand for a Bill of Particulars dated
November 19, 2020

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November 19, 2020

VIA EMAIL

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Southern District of New York
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Re: United States v. Kukushkin, et al., 19 Cr. 725 (S1)(JPO)

Dear Counsel:

We write as counsel to Andrey Kukushkin to seek a Bill of Particulars pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure. The particulars we seek are as follows:

Count Four – The Foreign National Donor Scheme:

1. With respect to paragraph 47 (b) of the Superseding Indictment, identify each alleged contribution or donation, or express or implied promise to make contributions or donations, directly or indirectly, by a foreign national in connection with federal and State elections, aggregating to \$25,000 and more in a calendar year which the government contends Mr. Kukushkin and the other defendants conspired to make; and

2. With respect to paragraph 47 (c) of the Superseding Indictment, identify each alleged contribution to candidates for State and federal office, joint fundraising committee, and independent expenditure committee in the names of others aggregating to \$25,000 and more in a calendar year which the government contends Mr. Kukushkin and the other defendants conspired to make.

Count Six – Making a Contribution by a Foreign National

1. With respect to paragraph 52 of the Superseding Indictment, identify each alleged contribution or donation or express and implied promise to make contributions or donations by a foreign national in connection with federal and State elections, aggregating to \$25,000 and more in a calendar year the making of which the government contends Mr. Kukushkin and the other defendants aided and abetted.

Thank you for your cooperation in this matter. If you have any questions, please do not hesitate to call.

Very truly yours,

/s/ Gerald B. Lefcourt
Gerald B. Lefcourt

Exhibit I

Government's response to Mr. Kukushkin's demand for a
Bill of Particulars dated November 24, 2020



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

November 24, 2020

BY EMAIL

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Re: *United States v. Andrey Kukushkin*, No. S1 19 Cr. 725 (JPO)

Dear Counsel:

We write in response to your request for a bill of particulars, dated November 19, 2020, in which you request that we identify contributions, donations, and express or implied promises to make contributions or donations alleged in the Superseding Indictment.

A bill of particulars is unwarranted in this case because the Government has more than satisfied its obligations to provide the defense with sufficient information to “prepare for trial, to prevent surprise, and to interpose a plea of double jeopardy should [the defendant] be prosecuted a second time for the same offense.” *United States v. Bortnovsky*, 820 F.2d 572, 574 (2d Cir. 1987). The Superseding Indictment contains a concise and definite written statement of the essential facts constituting the offenses charged, and it identifies the contributions and donations that the Government expects to prove at trial: (i) between \$1 million and \$2 million in planned contributions listed on a table of donations and contributions (*see* S1 Indictment ¶ 22); (ii) contributions that had previously been charged on credit cards belonging to Igor Fruman and/or Lev Parnas (*see id.* ¶ 24); and (iii) two \$10,000 donations to candidates in Nevada on or about November 1, 2018 (*see id.*). In addition to the Superseding Indictment, you are in possession of, among other things: (i) numerous search warrant affidavits that outline evidence revealed during the Government’s investigation over time, including relevant emails and financial records; (ii) the contents of your client’s cellphone and email and iCloud accounts; (iii) the seized materials from the other defendants’ email and iCloud accounts, cellphones, and computers; (iv) bank records relating to the above-referenced contributions and donations; (v) publicly-available Federal Election Commission records as well as records produced by some of the candidates and campaigns; and (vi) copies of all of the emails, text messages, and documents referenced in the Superseding Indictment. With each of our discovery productions, we have provided an index, and as we have offered on multiple occasions, we are available to answer any questions you may have about discovery.

November 24, 2020

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The Superseding Indictment and the materials produced during discovery provide you with more than ample information concerning the allegations that the Government intends to prove at trial and the supporting evidence. *See, e.g., United States v. Reinhold*, 994 F. Supp. 194, 201 (S.D.N.Y. 1998) (denying request for bill of particulars where the “indictment is detailed in its allegations” and the “defendants have had extensive discovery”); *United States v. Pacheco*, 902 F. Supp. 469, 475 (S.D.N.Y. 1995) (denying request for bill of particulars because “the charges are adequately set forth in the indictment, the criminal complaint, and in discovery”); *United States v. Conesa*, 899 F. Supp. 172, 176 (S.D.N.Y. 1995) (denying request for bill of particulars because “[t]he Indictment sufficiently advises defendants of the specific acts of which they are accused” and “the Government . . . has made available to defense counsel extensive discovery that supplements the information provided in the . . . Indictment”).

Your request asks for additional evidentiary details and for us to further articulate the theory or theories of the Government’s case. But it is settled law that “[a]cquisition of evidentiary details is not the function of the bill of particulars.” *United States v. Torres*, 901 F.2d 205, 234 (2d Cir. 1990). Nor may a bill of particulars be used as a general investigative tool. “It is not enough that the information would be useful to the defendant; if the defendant has been given adequate notice of the charges against him, the government is not required to disclose additional details about its case.” *United States v. Payden*, 613 F. Supp. 800, 816 (S.D.N.Y. 1985); *see also, e.g., United States v. Sindone*, No. 01 Cr. 517 (MBM), 2002 WL 48604, at *1 (S.D.N.Y. Jan. 14, 2002) (a defendant may not “use a bill of particulars to preview the government’s evidence or trial strategy, or to require the government to specify the minutiae of how it will prove the charges.” (citations omitted)); *United States v. Guerrierio*, 670 F. Supp. 1215, 1225 (S.D.N.Y. 1987) (A bill of particulars “is not a discovery tool and is not intended to allow defendants a preview of the evidence or the theory of the government’s case.”). Rather, a bill of particulars is required “only when the charges of the indictment are so general that they do not advise the defendant of the specific acts of which he is accused.” *United States v. Torres*, 901 F.2d at 234. In light of the Superseding Indictment and the discovery disclosures, there is no colorable argument that the defendant is unaware of the acts of which he has been accused.

Based on the foregoing, you are not entitled to the particulars sought through your requests as they amount to requests for the sort of precise evidentiary detail and information concerning the Government’s theory of its case that are not the proper function of a bill of particulars, and in any event, much of what you seek is described in the Superseding Indictment and discovery. If you have authority for your requests, we would be happy to consider it.

Notwithstanding the foregoing, while we are not required to do so, in an effort to aid in your review of the discovery, and to assist you in preparing for trial, the Government is voluntarily providing additional information regarding certain of your requests. By voluntarily providing this information, the Government is not limiting its evidence, arguments or legal theories at trial to what is set forth below. This is not an exhaustive identification of potential information or evidence related to these specific requests, but rather a roadmap to assist with your review of discovery in light of your specific requests. In addition, as we have stated previously, the investigation is ongoing.

November 24, 2020

Page 3

- Multiple copies and drafts of the “Political Donations Table” referenced in paragraph 22 of the Superseding Indictment were produced in discovery, including at USAO_00084470-USAO_00084472; USAO_00084474-USAO_00084476; USAO_00090126-USAO_00090128; USAO_00094241-USAO_00094244; and USAO_00094246-USAO_00094248.
- Records for the credit card accounts used to pay for contributions and donations referenced in paragraph 24 of the Superseding Indictment were produced in discovery at USAO_00107954-USAO_00108873.
- Records produced by the candidates referenced in paragraph 24 of the Superseding Indictment were produced in discovery at USAO_00102503-USAO_00103402 and USAO_00143857.

Please let us know if you have any questions or would like to discuss the foregoing.

Very truly yours,

AUDREY STRAUSS

Acting United States Attorney for the
Southern District of New York

By: _____/s/
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Cc: Joseph Bondy, counsel for Lev Parnas
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